

SUBCHAPTER A—GENERAL

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

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AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat.
445, (22 U.S.C. 2381) as amended; E.O. 12163,
Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp.,
p. 435.

SOURCE: 49 FR 13236, Apr. 3, 1984, unless
otherwise noted.

Subpart 701.1—Purpose, Authority, Issuance

701.105 OMB approval under the Pa- perwork Reduction Act.

(a) The following information collec-
tion and record keeping requirements
established by USAID have been ap-
proved by OMB, and assigned an OMB
control number and approval/expira-
tion dates as specified below:

AIDAR segment	OMB control No.	Expiration date	Burden hours per report
733.7003(c)	0412-0520	08/31/2000	40
752.209-70	0412-0520	08/31/2000	4
752.219-8	0412-0520	08/31/2000	1
752.245-70	0412-0520	08/31/2000	.5
752.245-71	0412-0520	08/31/2000	1
752.7001(a)	0412-0520	08/31/2000	.5
752.7001(b)	0412-0520	08/31/2000	.5
752.7002(j)	0412-0520	08/31/2000	1
752.7003	0412-0520	08/31/2000	8
752.7004(b)(4)	0412-0520	08/31/2000	.5
752.7032	0412-0520	08/31/2000	2
752.7033	0412-0536	08/31/2000	4

(b) The information requested by the
AIDAR sections listed in paragraph (a)
is necessary to allow USAID to pru-
dently administer public funds. It lets
USAID make reasonable assessments of
contractor capabilities and responsi-
bility of costs. Information is required
in order for a contractor and/or its em-
ployee to obtain a benefit-usually tak-
ing the form of payment under a gov-
ernment contract.

(c) Public reporting burden for these
collections of information is estimated
as shown in paragraph (a) of this sec-
tion. The estimated burden includes
the time for reviewing instructions,
searching existing data sources, gath-
ering and maintaining the data needed,
and completing and reviewing the col-
lection of information. Send comments
regarding the burden estimates or any
other aspects of these collections of in-
formation, including suggestions for

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reducing the burden, to: U.S. Agency for International (USAID), Office of Procurement, Policy Division (M/OP/P), Room 7.08-082U, 1300 Pennsylvania Avenue, N.W. Washington, D.C. 20523-7801; and Office of Management and Budget (OMB), Paperwork Reduction Project (0412-0520), Washington, D.C. 20503.

[59 FR 33445, June 29, 1994, as amended at 61 FR 39090, July 26, 1996; 62 FR 40466, July 29, 1997; 64 FR 16648, Apr. 6, 1999]

Subpart 701.3—U.S. Agency for International Development Acquisition Regulation

SOURCE: 64 FR 42040, Aug. 3, 1999, unless otherwise noted.

701.301 Policy.

(a) *Responsibility.* Subject to the direction of the Administrator, the Director, Office of Procurement (“M/OP Director”) is responsible for:

(1) Developing and maintaining necessary uniform procurement policies, procedures, and standards;

(2) Providing assistance to the contracting activities as appropriate;

(3) Keeping the Administrator and Executive Staff fully informed on procurement matters which should be brought to their attention; and

(4) All agency head duties and authorities stated in (48 CFR) FAR subpart 1.3, in accordance with (48 CFR) AIDAR 701.601. These responsibilities include but are not limited to developing, issuing, and maintaining the USAID Acquisition Regulation (“AIDAR”, 48 CFR chapter 7), USAID’s supplement to the Federal Acquisition Regulation (48 CFR Chapter 1), in coordination with the General counsel and such other offices as may be appropriate.

(b) *Applicability.* (1) Unless a deviation is specifically authorized in accordance with subpart 701.4, or unless otherwise provided, the FAR and AIDAR apply to all contracts (regardless of currency of payment, or whether funds are appropriated or non-appropriated) to which USAID is a direct party.

(2) At Missions where joint administrative services are arranged, pro-

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curing offices may apply the Department of State Acquisition Regulation (48 CFR chapter 6) for all administrative and technical support contracts except in defined areas. The Office of Administrative Services will furnish the defined areas and administrative guidelines for procurement to the overseas Missions. Administrative and local support services include the procurement accountability, maintenance and disposal of all office and residential equipment and furnishings, vehicles and expendable supplies purchased with administrative and/or technical support funds, either dollars or local currency.

701.303 Publication and codification.

(a) The AIDAR is USAID’s Acquisition Regulation supplementing the FAR (48 CFR chapter 1) and is published as chapter 7 of Title 48, Code of Federal Regulations. AIDAR Circulars shall be used to promulgate changes to the AIDAR and shall be published in compliance with (48 CFR) FAR part 1.

(b) *Appendices.* Significant procurement policies and procedures that do not correspond to or conveniently fit into the FAR system described in FAR 1.1 and 1.303 may be published as Appendices to the AIDAR. Appendices follow the main text of the AIDAR in a section entitled “Appendices to Chapter 7” and contain a table of contents and the individual appendices identified by letter and subject title (*e.g.*, “Appendix D—Direct USAID Contracts with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad”).

(c) Only the M/OP Director has the authority to issue internal agency guidance applicable to all agency contracts. The heads of the various USAID contracting activities (see subparts 701.6 and 702.10) may issue operating instructions and procedures consistent with the FAR, AIDAR, and other Agency regulations, policies, and procedures for application within their organizations. One copy of each such issuance shall be forwarded to the Office of Procurement, Policy Division (M/OP/POL). Insofar as possible, such material will be numerically keyed to the AIDAR.

Subpart 701.4—Deviations from the FAR or AIDAR

701.402 Policy.

It is the policy of USAID that deviation from the mandatory requirements of the FAR and AIDAR shall be kept at a minimum and be granted only if it is essential to effect necessary procurement and when special and exceptional circumstances make such deviation clearly in the best interest of the Government.

701.470 Procedure.

(a) Deviation from the FAR or AIDAR affecting one contract or transaction.

(1) Deviations which affect only one contract or procurement will be made only after prior approval by the head of the contracting activity. Deviation requests containing the information listed in paragraph (c) of this section shall be submitted sufficiently in advance of the effective date of such deviation to allow adequate time for consideration and evaluation by the head of the contracting activity.

(2) Requests for such deviations may be initiated by the responsible USAID contracting officer who shall obtain clearance and approvals as may be required by the head of the contracting activity. Prior to submission of the deviation request to the head of the contracting activity for approval, the contracting officer shall obtain written comments from the Office of Procurement, Policy Division (M/OP/P), hereinafter referred to as "M/OP/P". The M/OP/P shall normally be allowed 10 working days prior to the submission of the deviation request to the head of the contracting activity to review the request and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with the M/OP/P for a shorter review period. In addition to a copy of the deviation request, the M/OP/P shall be furnished any background or historical data which will contribute to a more complete understanding of the deviation. The comments of the M/OP/P shall be made a part of the deviation request file which is forwarded to the head of the contracting activity.

(3) Coordination with the Office of General Counsel, as appropriate, should also be effected prior to approval of a deviation by the head of the contracting activity.

(b) Class deviations from the FAR or AIDAR: Class deviations are those which affect more than one contract or contractor.

(1) Class deviations from the AIDAR will be processed in the same manner as prescribed in paragraph (a) of this section. Individual heads of contracting activities have authority to approve class deviations affecting only contracts within their own contracting activities, except that the Director, M/OP, has authority to approve class deviations that affect more than one contracting activity.

(2) Class deviations from the FAR shall be considered jointly by USAID and the Chairperson of the Civilian Agency Acquisition Council (C/CAAC) (FAR 1.404) unless, in the judgement of the head of the contracting activity, after due consideration of the objective of uniformity, circumstances preclude such consultation. The head of the contracting activity shall certify on the face of the deviation the reason for not coordinating with the C/CAAC. In such cases, the M/OP/P, shall be responsible for notifying the C/CAAC of the class deviation.

(3) Class deviations from the FAR shall be processed as follows:

(i) The request shall be processed in the same manner as paragraph (a) of this section, except that the M/OP/P, shall be allowed 15 working days prior to the submission of the deviation request to the head of the contracting activity to effect the necessary coordination with the C/CAAC and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with the M/OP/P for a shorter review and coordination period. The comments of the C/CAAC and the M/OP/P shall be made a part of the deviation request file which is forwarded to the head of the contracting activity.

(ii) The request shall be processed in the same manner as paragraph (a) of this section if the request is not being jointly considered by USAID and the C/CAAC.

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(4) Deviations involving basic agreements or other master type contracts are considered to involve more than one contract.

(5) Unless the approval is sooner rescinded, class deviations shall expire 2 years from the date of approval provided that deviation authority shall continue to apply to contracts or task orders which are active at the time the class deviation expires. Authority to continue the use of such deviation beyond 2 years may be requested in accordance with the procedures prescribed in paragraph (a) of this section.

(6) Expiration dates shall be shown on all class deviations.

(c) Requests for deviation shall contain a complete description of the deviation, the effective date of the deviation, the circumstances in which the deviation will be used, a specific reference to the regulation being deviated from, an indication as to whether any identical or similar deviations have been approved in the past, a complete justification of the deviation including any added or decreased cost to the Government, the name of the contractor, and the contract or task order number.

(d) Register of deviations: Separate registers shall be maintained by the procuring activities of the deviations granted from the FAR and AIDAR. Each deviation shall be recorded in its appropriate register and shall be assigned a control number as follows: the symbol of the procuring activity, the abbreviation "DEV", the fiscal year, the serial number [issued in consecutive order during each fiscal year] assigned to the particular deviation and the suffix "c" if it is a class deviation, e.g. CM-DEV-85-1, CM-DEV-85-2c. The control number shall be embodied in the document authorizing the deviation and shall be cited in all references to the deviation.

(e) Central record of deviations: Copies of approved deviations shall be furnished promptly to the M/OP/P, who shall be responsible for maintaining a central record of all deviations that are granted.

(f) Semiannual report of class deviations:

(1) USAID contracting officers shall submit a semiannual report to the M/OP/P of all contract actions effected

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under class deviations to the FAR and AIDAR which have been approved pursuant to paragraph (b) of this section.

(2) The report shall contain the applicable deviation control number, the contractor's name, contract number and task order number (if appropriate).

(3) The report shall cover the 6-month periods ending June 30 and December 31, respectively, and shall be submitted within 20 working days after the end of the reporting period.

[49 FR 13236, Apr. 3, 1984, as amended at 50 FR 50302, Dec. 10, 1985; 55 FR 6802, Feb. 27, 1990; 56 FR 67224, Dec. 30, 1991; 59 FR 33445, June 29, 1994; 61 FR 39090, July 26, 1996]

Subpart 701.6—Career Development, Contracting Authority, and Responsibilities

701.601 General

(a) (1) Pursuant to the delegations in ADS 103.5.10, the M/OP Director is authorized to act as the Head of the Agency for all purposes described in the Federal Acquisition Regulation (FAR, 48 CFR Chapter 1), except for the authority in (48 CFR) FAR sections 6.302-7(a)(2), 6.302-7(c)(1), 17.602(a), 19.201(c), 27.306(a), 27.306(b), and 30.201-5, or where the "head of the agency" authority is expressly not delegable under the FAR or AIDAR. Further, the M/OP Director is responsible for implementing the procurement related aspects of the Foreign Assistance Act, Executive Order 11223, the Office of Federal Procurement Policy Act, and other statutory and Executive Branch procurement policies and requirements applicable to USAID operations, except for those authorities and responsibilities delegated to the Procurement Executive as specified in ADS 103.5.10f.

(2) The M/OP Director has specified authority to:

(i) Select and appoint contracting officers and terminate their appointments in accordance with section 1.603 of the Federal Acquisition Regulation; and

(ii) Exercise in person or by delegation the authorities stated in subpart 1.4 of the Federal Acquisition Regulation with regard to deviations from that regulation.

(b) Except as otherwise prescribed, the head of each contracting activity

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(as defined in 702.170) is responsible for the procurement of supplies and services under or assigned to the procurement cognizance of his or her activity. The heads of USAID contracting activities are vested with broad authority to carry out the programs and activities for which they are responsible. This authority includes authority to execute contracts and the establishment of procurement policies, procedures, and standards appropriate for their programs and activities, subject to government-wide and USAID requirements and restrictions, such as those found at 701.376–4 and particularly 701.603–70, the USAID policy regarding the direct-hire status of contracting officers.

(c) The authority of heads of contracting activities to execute contracts is limited as follows:

(1) Director, Office of U.S. Foreign Disaster Assistance. Authority to execute contracts for disaster relief purposes during the first 72 hours of a disaster in a cumulative total amount not to exceed \$500,000. Authority to execute simplified acquisitions up to \$50,000 at any time. May issue warrants for simplified acquisitions up to \$50,000 to qualified individuals on his or her staff.

(2) Director, Center for Human Capacity Development (G/HCD). Authority to execute simplified acquisitions up to \$10,000. Unlimited authority for procuring participant training based on published catalog prices, using M/OP/E approved forms. May issue warrants for simplified acquisitions up to \$10,000 to qualified individuals on his or her staff.

(3) Overseas heads of contracting activities. Authority to sign contracts where the cumulative amount of the contract, as amended, does not exceed \$250,000 (or local currency equivalent) for personal services contracts or \$100,000 (or local currency equivalent) for all other contracts. May issue warrants for simplified acquisitions up to \$50,000 to qualified individuals on his or her staff.

[53 FR 4980, Feb. 19, 1988, as amended at 55 FR 6802, Feb. 27, 1990; 56 FR 67224, Dec. 30, 1991; 58 FR 8702, Feb. 17, 1993; 59 FR 33445, June 29, 1994; 60 FR 11912, Mar. 3, 1995; 61 FR 39090, July 26, 1996; 62 FR 40466, July 29, 1997; 64 FR 42041, Aug. 3, 1999]

701.602–1 Authority of contracting officers in resolving audit recommendations.

With the exception of termination settlements subject to part 749, Termination of Contracts, contracting officers shall have the authority to negotiate and enter into settlements with contractors for costs questioned under audit reports, or to issue a contracting officer's final decision pursuant to the disputes clauses (in the event that questioned costs are not settled by negotiated agreement) in accordance with ADS Chapter 591.5.20. The negotiated settlement or final decision shall be final, subject only to a contractor's appeal, either under the provisions of the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), or to the courts. Policies and procedures for resolving audit recommendations are in accordance with ADS Chapters 591 and 592.

[62 FR 40466, July 29, 1997]

701.602–3 Ratification of unauthorized commitments.

(a) [Reserved]

(b) *Policy.* (1) [Reserved]

(2) In order to maintain management oversight and controls on unauthorized commitments, authority to ratify unauthorized commitments within USAID is reserved to the M/OP Director.

[53 FR 6829, Mar. 3, 1988, as amended at 64 FR 42040, Aug. 3, 1999]

701.603 Selection, appointment, and termination of appointment.

701.603–70 Designation of contracting officers.

A contracting officer represents the U.S. Government through the exercise of his/her delegated authority to negotiate, sign, and administer contracts on behalf of the U.S. Government. The contracting officer's duties are sensitive, specialized, and responsible. In order to insure proper accountability, and to preclude possible security, conflict of interest, or jurisdiction problems, it is USAID policy that USAID

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contracting officers must be U.S. citizen direct-hire employees of the U.S. Government.

[49 FR 13236, Apr. 3, 1984, as amended at 61 FR 39091, July 26, 1996]

Subpart 701.7—Determinations and Findings

701.704 Content.

There is no USAID-prescribed format or form for determinations and findings (D&Fs). D&Fs are to contain the information specified in FAR 1.704 and any information which may be required by the FAR or AIDAR section under which the D&F is issued.

[58 FR 8702, Feb. 17, 1993, as amended at 62 FR 40466, July 29, 1997]

701.707 Signatory authority.

Unless otherwise specified in the FAR or AIDAR section under which the D&F is issued, the Contracting Officer is the signing official.

[58 FR 8702, Feb. 17, 1993]

PART 702—DEFINITIONS OF WORDS AND TERMS

Subpart 702.170—Definitions

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- 702.170-1 USAID.
- 702.170-2 Administrator.
- 702.170-3 Contracting activities.
- 702.170-4 Cooperating country.
- 702.170-5 Cooperating country national (CCN).
- 702.170-6 Executive agency.
- 702.170-7 Foreign Assistance Act.
- 702.170-8 Government, Federal, State, local and political subdivisions.
- 702.170-9 Head of agency.
- 702.170-10 Head of the contracting activity.
- 702.170-11 Mission.
- 702.170-12 Overseas.
- 702.170-13 Procurement Executive.
- 702.170-14 [Reserved]
- 702.170-15 Third country national (TCN).
- 702.170-16 U.S. national (USN).
- 702.170-17 Automated Directives System.

Subpart 702.270—Definitions Clause

702.270-1 Definitions clause.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

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SOURCE: 49 FR 13238, Apr. 3, 1984, unless otherwise noted.

Subpart 702.170—Definitions

702.170-1 USAID.

USAID means the U.S. Agency for International Development and its predecessor agencies, including the International Cooperation Administration (ICA).

702.170-2 Administrator.

Administrator means the Administrator or Deputy Administrator of the U.S. Agency for International Development.

702.170-3 Contracting activities.

The contracting activities within USAID are:

(a) *The USAID/Washington activities.* The contracting activities located in Washington are the Office of Procurement, Office of Foreign Disaster Assistance, and Center for Human Capacity Development (G/HCD). Subject to the limitations stated in 702.170-10, these contracting activities are responsible for procurement related to programs and activities for their areas. The Office of Procurement is responsible for procurements which do not fall within the responsibility of other contracting activities, or which are otherwise assigned to it.

(b) *The overseas field contracting activities.* Each USAID Mission or post overseas is a contracting activity, responsible for procurement related to its programs and activities, subject to the limitations in 702.170-10(b), which sets forth the contracting authority for Mission Directors and principal USAID officers at posts.

[50 FR 16085, Apr. 24, 1985, as amended at 50 FR 40528, Oct. 4, 1985; 50 FR 50302, Dec. 10, 1985; 51 FR 20651, June 6, 1986; 56 FR 67224, Dec. 30, 1991; 61 FR 39091, July 26, 1996; 62 FR 40466, July 29, 1997]

702.170-4 Cooperating country.

Cooperating country means a foreign country in which there is a program or activity administered by USAID.